



[6705-01-P]

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 620, and 630

RIN 3052-AD00

Organization; Disclosure to Shareholders; Disclosure to
Investors in System-wide and Consolidated Bank Debt
Obligations of the Farm Credit System; Advisory Vote

AGENCY: Farm Credit Administration.

ACTION: Interim final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) issues this interim final rule amending its regulations to remove all requirements for non-binding, advisory votes at Farm Credit System (System) banks and associations. This rule is in response to recent legislation wherein Congress provided that no funds available to the FCA may be used to "implement or enforce" regulations requiring non-binding, advisory votes on senior officer compensation, and directed the FCA to review its rules to ensure they reflect Congressional intent that a primary responsibility of the boards of directors of System institutions is to oversee compensation practices.

DATES: This interim final rule will become effective 30 days after publication in the Federal Register during which

either or both Houses of Congress are in session. We will publish notice of the effective date in the Federal Register. Comments, if any, are due within [Insert date 30 days after date of publication].

ADDRESSES: Interested parties may submit written comments by any of the following methods:

- E-mail: Send an e-mail to reg-comm@fca.gov.
- FCA Web site: http://www.fca.gov. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- Mail: Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at http://www.fca.gov. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters.

Identifying information that you provide, such as phone

numbers and addresses, will be publicly available.

However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Deborah Wilson, Associate Director, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4224, TTY (703) 883-4056,

or

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SUPPLEMENTARY INFORMATION:

I. Objective

Our objective in this interim final rule is to ensure the provisions of Title VI of the Consolidated Appropriations Act, 2014 (Appropriations Act)¹ are fulfilled by ensuring our rules on non-binding, advisory votes on senior officer compensation are neither implemented nor enforced.

II. Background

¹ 113 Pub. L. 76, 128 Stat. 5 (H.R. 3547).

On October 3, 2012, the FCA² issued a final rule regarding senior officer compensation disclosures and related topics that amended parts 611, 612, 619, 620, and 630.³ Section 611.410 of the rule requires Farm Credit banks and associations to hold non-binding, advisory votes on senior officer compensation in certain circumstances.⁴ On January 17, 2014, the President of the United States signed into law the Appropriations Act. The Appropriations Act is the vehicle for making consolidated appropriations for Federal agencies in the fiscal year ending September 30, 2014, and for other purposes.⁵ A provision in Title VI of the Appropriations Act limits the FCA from using fiscal year 2014 funds to "implement or enforce those portions of

² As an independent agency within the Executive branch of the Federal Government, FCA is responsible for the safety, soundness, regulation and supervision of the banks, associations, and related entities in the System, as well as the Federal Agricultural Mortgage Corporation (Farmer Mac). The System and Farmer Mac are Government-sponsored enterprises with public service missions.

³ See 77 FR 60582. The rule was effective December 17, 2012, but non-binding, advisory votes on compensation increases of 15 percent or more are not required until 2015 (77 FR 76215, December 27, 2012).

⁴ On December 4, 2012, the Farm Credit Council, on behalf of the System banks and associations, filed a petition requesting that we repeal those provisions of the final rule that require a non-binding, advisory vote on senior officer compensation. Interested parties have the right to petition a Federal agency to issue, amend, or repeal regulations under 5 U.S.C. 553(e). We published the petition in the Federal Register on February 19, 2013 (78 FR 11551), and invited comments.

⁵ The FCA does not receive a Federal appropriation and is primarily funded through assessments paid by System institutions. In its appropriations Acts, Congress limits the amount of funds that the FCA can assess and collect from System institutions for our administrative expenses.

the final regulation published in the Federal Register on October 3, 2012 (77 FR 60582), establishing a requirement that Farm Credit System institutions hold an advisory vote on officer compensation."

Also, in February 2014, the Agricultural Act of 2014 (Farm Bill) was signed into law.⁶ Section 5404 of the Farm Bill contained "Findings by Congress" that emphasized the benefit to System stockholders' understanding of the operations of their institution through disclosure of the institution's senior officer compensation, and explained that transparent disclosure regarding compensation practices reinforces the cooperative nature of System institutions.⁷ Also, the findings in Section 5404 of the Farm Bill placed primary responsibility, and therefore accountability, for the establishment and oversight of System institution compensation practices with each institution's board of directors,⁸ and clearly linked the

⁶ 113 Pub. L. 79, 128 Stat. 649 (H.R. 2642), signed by the President on February 7, 2014.

⁷ As cooperatives, the System banks and associations are borrower-owned financial institutions. Only those borrowers who are farmers, ranchers, or producers or harvesters of aquatic products, and cooperatives eligible to borrow from System institutions under the Farm Credit Act of 1971, as amended, hold voting stock. Also, System associations are voting stockholders of their affiliated Farm Credit bank.

⁸ The voting stockholders of each System bank and association elect a majority of its directors. The stockholder-elected directors must

boards' oversight responsibility for compensation to the overall safe and sound operations of the respective institutions. Congress explained in the Farm Bill that any regulation should strengthen the ability of System institutions' boards of directors to oversee compensation practices. Consistent with the aforementioned Congressional findings, the FCA will continue to emphasize, through its regulatory and supervisory authorities, the importance of providing comprehensive, transparent and beneficial disclosures to stockholders on senior officer compensation. We also intend to reinforce the responsibility and accountability of System institutions' boards of directors in establishing and overseeing compensation practices to ensure the safe and sound operation of the institutions they serve.

III. Interim Final Rulemaking and Non-binding, Advisory Votes on Compensation

With the promulgation of this rule, the FCA is using the "Interim Final" rule procedure for rulemaking, which permits agencies to adopt certain rules on an expedited basis, without going through the usual proposal and final

constitute at least 60 percent of the members of each institution's board.

stages of notice-and-comment rulemaking. The Administrative Procedure Act (APA) generally requires an agency to publish notice of a proposed and final rulemaking in the Federal Register. This requirement does not apply, however, when the agency "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."⁹

The FCA believes that the amendments contained in this rulemaking fit the category of rules appropriate for interim final rulemaking. We believe the provision in Title VI of the Appropriations Act supports an interim final rulemaking as the limitation arguably makes formal proposed and final rulemaking procedures "impracticable, unnecessary, or contrary to the public interest." Further, we believe amending the rule to remove the requirements for non-binding, advisory votes will ensure compliance with the Appropriations Act. Consistent with the Appropriations Act, as well as the Farm Bill, this interim final rulemaking is limited to the advisory vote provisions of the October 3, 2012, (77 FR 60582) rulemaking.

⁹ See 5 U.S.C. 553(b). The APA, 5 U.S.C. 551-59, et seq., supports this streamlined technique of rulemaking.

Specifically, we are removing the following rule provisions:

- § 611.100(a), defining the term "advisory vote";
- § 611.360, requiring policies and procedures for non-binding, advisory votes on senior officer compensation;
- § 611.410, addressing non-binding, advisory votes on senior officer compensation;
- § 620.5(a)(11), requiring disclosure of any advisory votes held during the reporting year at the institution;
- § 620.6(c)(6), requiring disclosure (adjacent to the compensation table) in the annual report of a stockholder's right to petition for a non-binding, advisory vote on senior officer compensation; and
- § 630.20(i)(last sentence), requiring disclosure of any advisory votes held during the reporting year within the System.

All other regulatory provisions and changes resulting from the October 3, 2012 (77 FR 60582) rulemaking remain in effect.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the FCA hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 630

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 620, and 630 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 611--ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0-7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a-2279f-1, 2279aa-5(e)); secs. 411 and 412 of Pub. L. 100-233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100-399, 102 Stat. 989, 1004.

§ 611.100 [Amended]

2. Section 611.100 is amended by removing paragraph (a) and redesignating paragraphs (b) through (h) as new paragraphs (a) through (g), respectively.

§ 611.360 [Removed and reserved]

3. Section 611.360 is removed and reserved.

§ 611.410 [Removed and reserved]

4. Section 611.410 is removed and reserved.

PART 620--DISCLOSURE TO SHAREHOLDERS

5. The authority citation for part 620 continues to read as follows:

Authority: Secs. 4.3, 4.3A, 4.19, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2154, 2154a, 2207, 2243, 2252, 2254); sec. 424 of Pub. L. 100-233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102-552, 106 Stat. 4102.

§ 620.5 [Amended]

6. Section 620.5 is amended by removing paragraph (a)(11) and redesignating paragraph (a)(12) as new paragraph (a)(11).

§ 620.6 [Amended]

7. Section 620.6 is amended by removing paragraph (c)(6) and redesignating paragraph (c)(7) as new paragraph (c)(6).

PART 630—DISCLOSURE TO INVESTORS IN SYSTEM-WIDE AND
CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT
SYSTEM

8. The authority citation for part 630 continues to read as follows:

Authority: Secs. 4.2, 4.9, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2153, 2160, 2243, 2252, 2254); sec. 424 of Pub. L. 100-233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102-552, 106 Stat. 4102.

§ 630.20 [Amended]

9. Section 630.20 is amended by removing the last sentence of paragraph (i).

Date: March 21, 2014_

Dale L. Aultman,
Secretary,
Farm Credit Administration Board.

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